



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: November 22, 2024

Dockets: LR 24061

Type: Rental Appeal

INDEXED AS: Hani Mayaleh v. Amanpreet Kaur and Rimalpreet Singh

Order No: LR24-63

BETWEEN:

Hani Mayaleh (the "Landlord")

Appellant

AND:

Amanpreet Kaur and Rimpalpreet Singh (the "Tenants")

Respondents

ORDER

Panel Members:

Kerri Carpenter, Commissioner
Murray MacPherson, Commissioner

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk

Island Regulatory and Appeals Commission

A. INTRODUCTION

1. This appeal was heard by the Commission on October 1, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that the Landlord shall pay the Tenants \$3,809.21 by September 3, 2024.

B. BACKGROUND

2. On June 3, 2024, the Tenants filed a *Tenant Application to Determine Dispute (Form 2(A))* with the Residential Tenancy Office (the “Rental Office”) seeking a return of the security deposit (the “Tenant Application”). A copy was served to the Landlord on the same date.
3. On June 7, 2024, the Landlord filed a *Landlord Application to Determine Dispute (Form 2(B))* with the Rental Office seeking to make a claim against the security deposit for rent owing and compensation for “Other obligations” (the “Landlord Application”). A copy was served to the Tenants on the same date.
4. The Landlord submitted an additional two pages with the Application detailing the “Other obligations.” The additional submissions stated the Landlord was seeking compensation for:
 - a. \$259.41 for an outstanding electricity bill for April 2024;
 - b. \$247.08 for an outstanding electricity bill for May 2024; and
 - c. \$37.75 for an outstanding fuel bill.
5. On July 18, 2024, a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Tenants, a Tenant witness, and the Landlord participated in the hearing.
6. The Residential Tenancy Office issued Order LD24-259 on August 14, 2024, which Ordered that the Landlord shall pay the Tenants \$3,809.21 by September 3, 2024.
7. The Landlord appealed Order LD 24-259 on September 23, 2024.
8. The Commission heard the appeal on October 1, 2024, by way of telephone conference. The Landlord, Hani Mayaleh, attended the hearing and the Tenants, Amanpreet Kaur and Rimpalpreet Singh attended the hearing. Prince (no surname) testified for the Tenants.

C. DISPOSITION

9. The appeal is allowed in part, varying Order LD24-259 to provide the Landlord with 17 days of pro-rated rent. The remainder of Order LD24-259 is confirmed.

D. SUMMARY OF EVIDENCE

10. The Landlord testified that the evidence supported a finding that there was an agreement between the parties, expressed in text messages contained in Exhibit E-14, concerning the return of the security deposit. He submitted that these text messages allowed him to

retain an amount from the security deposit pursuant to clause 40.(3)(a) of the Residential Tenancy Act (the "Act"). He stated that the end of the tenancy should be May 31, 2024 rather than May 18, 2024 as established by Order LD24-259 as his efforts to mitigate his loss should not end the tenancy.

11. The Tenants testified that they provided the Landlord with three months notice they were leaving the rental unit. They testified that on April 4, 2024 the Landlord asked for written notice and they provided a signed written notice on April 6, 2024. They moved out of the rental unit on May 1, 2024. They testified that it was not until May 25, 2024 that the Landlord informed them that he had new tenants. The Tenants do not agree that their tenancy agreement ended on May 31, 2024.
12. Prince testified that he and a friend had moved in and lived with the tenants for five or six months. Prince advised that the Landlord was aware of this and OK with him living there. Prince testified that he paid a portion of the rent to Amanpreet and that the Landlord does not owe him any money.
13. Under the May 2, 2023 rental agreement between the parties (Exhibit E-9), the monthly rent was \$2100.00 per month with a security deposit paid in the amount of \$2100.00.

E. ANALYSIS

14. The first issue to address is the end date of the tenancy between the Landlord and the Tenants. Exhibit E-14, containing two pages of text messages, establishes that the Tenants suggested to the Landlord that they would be leaving the rental unit in an April 3, 2024 text message. Exhibit E-14 also establishes that the next day the Landlord requested that the Tenants provide a letter that they wish to move out on May 1 and that they wish to not renew the lease ending May 31. The Tenants have testified that they provided such letter on April 6, 2024 and this letter is in evidence as Exhibit E-17. As at April 6, 2024 when the written notice was first provided, the tenancy would have ended May 31, 2024.
15. Landlords have an obligation to mitigate their losses and seek a new tenant when another Tenant is departing. Upon learning that the Tenants would depart at the end of April, 2024, the Landlord sought a new Tenant. The evidence establishes that the Landlord re-rented the rental to a new tenant by way of a tenancy agreement dated May 15, 2024 (Exhibit E-23). This tenancy agreement was to begin on May 18, 2024 and end on April 30, 2025 with rent payable in the amount of \$2,150.00 per month.
16. As a new tenancy agreement commenced on May 18, 2024, the Commission finds that the latest date for the termination date of the tenancy agreement between the Landlord and the Tenants is May 17, 2024 as there cannot be two tenancy agreements in effect for the same rental unit at the same time. The Commission therefore accepts May 17, 2024 as the termination date for the tenancy between the parties to this appeal.
17. In Order LD24-259 the Rental Office found that the Landlord was not entitled to rent for the month of May 2024 prior to May 18 as the Landlord did not properly mitigate his loss, specifying "...that without this unauthorized rent increase [\$50.00 per month], the Landlord may have been able to secure a new tenant before May 18." The Commission rejects this

speculative approach, especially in the circumstances here where the net rent increase was only \$10.00 per month (rent increased from \$2,100.00 to \$2,150.00 per month and this \$50.00 increase was partly offset by terms in the new lease whereby the Landlord committed to paying \$40 of the monthly electricity bill). Accordingly, the Commission finds that the Landlord should receive credit for pro-rated rent for the first 17 days of May [17/31 x \$2100.00] in the amount of \$1,151.61. This sum will therefore be subtracted from any amount owed by the Landlord to the Tenants.

18. With respect to the Landlord’s argument that he was justified in retaining an amount from the security deposit pursuant to clause 40.(3)(a) of the *Act*, a careful review of the requirements of this clause is warranted:

Retention by landlord, other circumstances

40.(3) A landlord may retain an amount from a security deposit if

(a) at the end of a tenancy, the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant;

19. The Commission notes that clause 40.(3)(a) requires a written agreement at the end of the tenancy whereby the tenant agrees to pay a liability or obligation of the tenant. The text messages offered as evidence of such agreement are vague and do not amount to an agreement between the parties as required by the *Act* in order for a Landlord to withhold some or all of the security deposit without making application. Also, the text messages were from early April 2024 and thus do not reflect an agreement at the end of the tenancy. Accordingly, the Commission rejects the Landlord’s position that he was entitled to retain an amount under clause 40.(3)(a) as there was no agreement to do so at the end of the tenancy.

20. In order to retain the security deposit and avoid paying double the security deposit to the Tenant (under section 40 of the *Act*), the Landlord was required to make an application to the Director to retain the security deposit within 15 days after the tenancy ended. He failed to do this. The Landlord had entered into a lease with a new tenant on May 15, 2024 and such lease began on May 18, 2024. As the lease between the parties ended May 17, 2024, the Landlord was required to file his application with the Rental Office no later than June 3, 2024 [the first office day, as the 15th day fell on Saturday June 1]. He did not do so, and therefore the provisions of subsection 40(4), including the doubling of the security deposit, apply.

21. Accordingly, the following is the calculations of the amounts owed by the Landlord to the Tenants.

Item	Amount
Security Deposit	\$2,100.00
Interest (May 2, 2023 -August 14, 2024)	\$64.40
Interest August 15, 2024 to date of Commission Order	\$12.78
Double Security Deposit	\$2,100.00
Less Electricity	(\$417.44)
Less Oil	(\$37.75)

Less prorated rent for the first 17 days of May 2024	(\$1,151.61)
Total Owing to the Tenants	\$2,670.58

F. CONCLUSION

22. The appeal is allowed in part. Order LD24-259 is varied, decreasing the amount owed by the Landlord to the Tenants to [\$2,657.80 plus extra interest in the amount of \$12.78]. The remainder of Order LD24-259 is confirmed.

IT IS ORDERED THAT

1. The Landlord shall pay the sum of \$2670.58 [\$2,657.80 plus \$12.78].
2. The above payment shall be made by the Landlord to the tenants not later than November 29, 2024.

DATED at Charlottetown, Prince Edward Island, 22nd day of November, 2024.

BY THE COMMISSION:

(sgd. Kerri Carpenter)

 Kerri Carpenter, Commissioner

(sgd. Murray MacPherson)

 Murray MacPherson, Commissioner

NOTICE

Subsections 89 (9), (10) and (11) of the *Residential Tenancy Act* provides as follows:

89. (9) A landlord or tenant may, within 15 days of the decision of the Commission, appeal to the Court of Appeal in accordance with the *Island Regulatory and Appeals Commission Act* R.S.P.E.I. 1988, Cap. I-11, on a question of law only.

(10) Where the Commission has confirmed, reversed or varied an order of the Director, the landlord or tenant may file the order with the Supreme Court.

(11) Where an order is filed under subsection (10), it may be enforced as if it were an order of the Supreme Court.